

IN THE COUNTY COURT OF VICTORIA  
AT MELBOURNE  
CRIMINAL DIVISION

Revised  
Not Restricted  
Suitable for Publication

Case No. CR-19-00421

DIRECTOR OF PUBLIC PROSECUTIONS

v

JESSE CHRISTIAN REID

JUDGE: HIS HONOUR JUDGE WRAIGHT  
WHERE HELD: Melbourne  
DATE OF HEARING: 14 August 2019  
DATE OF SENTENCE: 29 August 2019  
CASE MAY BE CITED AS: DPP v Reid  
MEDIUM NEUTRAL CITATION: [2019] VCC 1362

**REASONS FOR SENTENCE**

---

Subject: CRIMINAL LAW  
Catchwords: Plea of guilty – two charges of engaging in conduct endangering life – one charge of culpable driving causing death – offender 21 years old at the time of the offending – Charge 3 is a standard sentence offence – relevant prior criminal history – very serious example of culpable driving – high level of moral culpability – relative youth enlivens principles in relation to young offenders - some cumulation to reflect the separate conduct and separate victims.  
Legislation Cited: *Crimes Act 1958, Sentencing Act 1991*  
Cases Cited: *Azzopardi v The Queen* (2011) 35 VR 43, *The Queen v Brown* [2018] VSC 742  
Sentence: Total effective sentence of 10 years imprisonment, eligible for parole after serving 7 years imprisonment.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Mr N Hutton	Office of Public Prosecutions
For the Accused	Mr A Patton	Emma Turnbull Lawyers

HIS HONOUR:

**Introduction**

- 1 Jesse Christian Reid, you have pleaded guilty to two charges of engaging in conduct endangering life contrary to s 22 of the *Crimes Act* 1958, which carries a maximum penalty of 10 years imprisonment and one charge of culpable driving causing death contrary to s 318(1) of the *Crimes Act* 1958, which carries a maximum penalty of 20 years imprisonment.
- 2 You have also admitted your Criminal Record.

**Circumstances of the offence**

- 3 A detailed prosecution opening was exhibited on the plea which includes many excerpts from witness who observed your driving in the period leading up to the collision. As such I will only briefly summarise a selection of those observations in these sentencing remarks.
- 4 On Thursday 13 September 2018, you drove from Melbourne to Merimbula, New South Wales and stayed at a friend's house. At the time you were 21 years of age and the holder of a P2 Victorian Driver Licence subject to a zero blood alcohol limit and, as a result of a prior court appearance, alcohol interlock conditions.
- 5 At about 7.30 am on Friday 14 September 2018, the victim in relation to Charge 3, Victor Kostiuk and his son Felix Kostiuk departed from Mr Kostiuk's Aspendale home to ride to Canberra as part of the Wall to Wall Remembrance Ride. The Wall to Wall Remembrance Ride is a charitable event to remember and honour fallen colleagues in the lead up to National Police Remembrance Day. Their route was to ride along the Princes Highway to Merimbula, stopping overnight, before heading to Canberra to meet up with other police colleagues from across the country.
- 6 At around the same time, you received a phone call advising you that your partner had gone into early labour.

- 7 At about 8:30 am, you called a 16 year old friend, who I will refer to as AB<sup>1</sup>, and asked him for company on the trip back to Melbourne. You picked up AB at 8:40 am and started driving back to Melbourne at 10:16 am in your 2002 Holden Commodore. The car was fitted with an interlock device. By this time, you were aware that your son had already been born and you had received messages from your partner's mother saying, 'Ok drive safe', 'Take your time and drive safely' and 'Ok don't speed'.
- 8 You drove from Merimbula to Eden and stopped to see some friends. While in Eden, you smoked ice and consumed alcohol. From there, AB started the car and drove from Eden to Kiah arriving at 12.37 pm.
- 9 You took over the driving when you left Kiah. The alcohol interlock device required a 'zero alcohol' sample to be supplied to it before it would permit the vehicle to be started. AB provided the sample of 'zero alcohol' breath at 12:44 pm however it was you who started driving.
- 10 At 12:59 pm the interlock device requested a random running retest and again, although you were driving, AB provided the sample of breath.
- 11 At 1:31 pm, the interlock device requested another random running retest. You provided a sample of breath at 1:31 pm with the result being 'Running Retest Sanction High BAC 065'. This caused the vehicle to shut down and enter a lockout state preventing the vehicle from being started for five minutes.
- 12 At 1:36 pm, AB provided a sample of 'zero alcohol' to start the vehicle although it was you who drove off. At 1:52 pm a further random running retest was required and AB provided another sample of 'zero alcohol' breath to start the vehicle although again, it was you who drove off.
- 13 At 2:17 pm, the device recorded an event of 'Power Off'. This accords with the time of collision.

---

<sup>1</sup> A pseudonym.

- 14 Throughout the trip from Kiah to the collision scene, you were seen by a number of witnesses and captured on dash cameras travelling at high speeds, overtaking vehicles over double white centre lines and travelling around blind corners on the incorrect side of the road. One witness was so concerned at the manner of your driving he called '000' to report it.
- 15 Investigators recovered videos from your mobile telephone, taken during drive from Genoa to Cabbage Tree Creek. These videos capture you driving the vehicle at extremely high speeds and in a very dangerous manner. There are five such videos. The videos were tendered and played during the plea hearing.
- 16 The first video is recorded by you while AB was driving along the Princes Highway between Eden and Kiah. In the video you state, 'When you're too fucked to drive and your baby's been born, your mate comes through.'
- 17 The second video is time stamped at 1:18 pm and shows you driving and AB in the front passenger seat. The speedometer shows speeds of between 190 and 200 km/h.
- 18 The third video is time stamped 1:23 pm and shows you driving and AB in the front passenger seat. The speedometer shows a speed of 180 km/h as you approach the rear of a semi-trailer at the end of an overtaking lane.
- 19 The fourth video is time stamped 1:25 pm and shows you driving the vehicle and AB in the front passenger seat. The speedometer shows speeds between 140 and 190 km/h as you approach a left-hand bend in the road with a 70 km/h advisory sign. As your vehicle enters that bend, the speedometer shows the vehicle travelling at about 160 km/h as it crosses the double white centre lines into the opposing lane.
- 20 As your vehicle continued on the incorrect side of the road it approached a right-hand bend. An oncoming VW camper van containing two occupants was forced to take evasive action to avoid a collision. Your vehicle also moves to the left and almost off the bitumen surface. AB can be heard saying: 'Go, Go, Go, Go, Go' and shortly afterwards, 'Keep going, keep going'. It is this conduct that relates to Charge 1, reckless conduct

endangering life.

- 21 The fifth video is time stamped 1:26 pm and shows you driving the vehicle and AB in the front passenger seat. The speedometer shows speeds between 190 and 200 km/h. AB can be heard saying, 'Go, Go, Go, Go, Get better'.
- 22 A number of witnesses observed you travelling at excessively high speed and overtaking in an unsafe manner prior to the collision. The first of these witnesses observed your vehicle in the Genoa area, some 110 kilometres from the collision scene, with further witnesses observing similar driving behaviours at various locations along the Princes Highway through to the collision scene.
- 23 As noted above, the observations of these witnesses have been included in the tendered prosecution opening and I will only summarise some of those observations as follows:
- 24 At about 1:15 pm Michael Vare was travelling east on the Princes Highway, north of Genoa, and observed you travelling towards him at high speed which he estimated to be at least 160 kilometres an hour.
- 25 Peter Donovan was driving a concrete truck west on the Princes Highway when he was passed by you and states, 'I think he was doing in excess of 140kms as there was dust and soot flying up from the rear of the car and passed me like I was standing still and just flew out of sight.' A short time later Mr Donovan passed you when you were stopped on the side of the road. As he was coming into Cann River, Mr Donovan was again passed by you at high speed and states, 'I've just hit the 60kms zone going into Cann River, doing 60kms an hour and this guy has passed me again, I reckon he was doing double my speed.'
- 26 Leonard and Jill Keen were towing their caravan west along the Princes Highway at Club Terrace, Victoria when they were overtaken by your vehicle at high speed and over double white centre lines as they approached a blind right-hand bend. This was captured on a dash camera and was played during the plea hearing.
- 27 Shane Douglas was travelling west along the Princes Highway at Bellbird Creek when he

observed you coming up behind him with your hazard lights on and states, 'As we were going up the hill there was a blind corner to our left, I couldn't see if there were any cars coming in the opposite direction. As we were half way up the hill (he) crossed to the incorrect side of the road and overtook me, I couldn't believe someone would overtake where he did. It was extremely dangerous.'

- 28 A number of witnesses were travelling west along the Princes Highway as part of the Wall to Wall Remembrance Ride and made observations of your driving. Many of these witnesses observed you driving at a high rate of speed with your hazards lights on, crossing double white centre lines and generally make observations of the dangerousness of your driving.
- 29 Wayne Reynolds is a Detective Leading Senior Constable of Police currently performing duties at the Major Collision Investigation Unit. Mr Reynolds was off duty and participating in the Wall to Wall Remembrance Ride and was riding east along the Princes Highway, Cabbage Tree Creek, when he observed you travelling towards him at a very fast rate of speed. He states that whilst approximately midway through a sweeping left curve, he observed your vehicle to be straddling the double white lines which separated the east and westbound lanes with approximately half to three quarters of your vehicle within the oncoming right eastbound lane. He estimated the speed of your vehicle to be 140-145 km/h. He observed your vehicle in his right side mirror after it passed him and observed that your vehicle had commenced loss of control. He saw your vehicle begin to rotate clockwise as the vehicle overcorrected from the sharp left movement whilst attempting to negotiate the sweeping right bend applicable for it.
- 30 Felix Kostiuk is a Detective Senior Constable of Police. He was off duty and participating in the Wall to Wall Remembrance Ride with his father, Victor Kostiuk, who was a Detective Senior Sergeant of Police and was riding east along the Princes Highway, Cabbage Tree Creek, when he observed your car travelling towards him. Felix Kostiuk states:

'As we approached this bend, a car appeared all of a sudden in front of me. It was in

the bend, travelling towards us. It appeared to be out of control, I had seen a puff of what looked like dust come from the rear left wheel of the car. The rear of the car appeared to have been off the road and on the gravel shoulder on the south side of the road. The rear of the car was skidding and had lost traction. I could hear the sound of tyres skidding and I could see tyre smoke, the rear left of the car was rotating towards us faster than the front. Within milliseconds, the front lost control as well, and the car was coming towards us, almost on a 45 degree angle. The car was a green Holden Commodore wagon with P plates displayed on the front.

I took evasive action and swerved to my left, hugging the north shoulder of the road. I saw dad's brake lights come on and him swerve to the right ... it appeared as though the car was going to pass between us. He was in the eastbound overtaking lane, I was heading in the direction of the front left corner of the car in the left lane, dad was in the process of crossing to the westbound lane to avoid the car. Compared with the previous westbound traffic passing us, this car was coming towards us at a far greater speed than those other cars.

As the car was about 5-10 metres away from us, it suddenly spun and rotated approximately 180 degrees clockwise, heading back across to the westbound lane. As it did this, I heard dad say 'Fuck, fuck, fuck', and I saw him impact the front right corner of the car. I heard a loud smash, saw glass and metal fly everywhere, and I saw dad get ejected from the bike, over the front of the car. He was cartwheeling vertically. I distinctly remember his arms flailing in the air.

- 31 The conduct that commenced with you losing control on the bend and ultimately resulting in the collision relates to Charge 2, reckless conduct endangering life, and Charge 3, culpable driving causing death.
- 32 Felix Kostiuk stopped his motorcycle, tended to his father and called '000'. As he was preparing to start CPR on his father, you approached him. You were bleeding from your right temple and appeared angry. You were observed by others to be aggressive and swearing before you approached Felix Kostiuk. Felix Kostiuk said to you, 'What the fuck

did you do?’ You clenched your fists and walked towards Felix Kostuik and said, ‘Excuse me cunt?’ Felix Kostuik said, ‘You killed my fucking dad’.

- 33 Victor Kostuik’s motorcycle sustained major impact damage, with the front suspension forks and head stem being partially detached from the chassis of the motorcycle. Mr Kostuik was ejected from his motorcycle, over the vehicle, before coming to rest in a small table drain on the southern side of the road. Mr Kostuik suffered life threatening injuries and was treated at the scene by witnesses and paramedics for about one hour before being declared deceased.
- 34 You suffered relatively minor injuries. AB was uninjured.
- 35 The Princes Highway, Cabbage Tree Creek, is a two-way, east-west single carriageway with a moderate downhill gradient for vehicles travelling west. The road was bitumen and in good condition. There was provision for one lane of traffic to travel west and for two lanes to travel east. The opposing lanes are separated by double white lines with tactile strips. The two eastbound lanes, one being an overtaking lane, were separated by a broken white line. Solid white tactile fog lines define the outer edges of the carriageway. The maximum speed limit is 100 km/h each way. At the time of the collision it was daylight, the road surface was dry, the weather was fine and visibility was good.
- 36 Police experts formed the following conclusions. At the commencement of the visible tyre mark, the Holden was in a yaw, caused by the right steering input by the driver, and was travelling at a minimum of 131 km/h. The vehicle yawed whilst rotating in a clockwise direction, before transitioning into a spinning skid. Post impact, the Holden rotated in an anticlockwise direction before coming to rest. At impact, the motorcycle was travelling at approximately 91 km/h.
- 37 Immediately before the collision you were straddling double white lines. You steered hard to your left to avoid a collision with motorcyclists Wayne and Tyler Reynolds and travelled onto the southern shoulder where you input a hard right hand steering manoeuvre causing you to lose traction and control causing your vehicle to commence to rotate in a clockwise direction. I note that the named victims in Charge 2 are Wayne Reynolds, Tyler



Reynolds and Felix Kostiuk.

- 38 Mr Kostiuk and his son Felix were travelling east and were forced to take evasive action, however Mr Kostiuk struck the driver side front door, guard and suspension of your vehicle. At the point of impact, your vehicle had rotated in excess of one hundred and eighty degrees and was effectively travelling backwards and still rotating.
- 39 You were arrested at the scene by an off duty police member and conveyed to the Bairnsdale Hospital for treatment. At 6:00 pm that day a blood sample was taken. The blood sample was analysed and found to contain not less than 0.015 grams of alcohol per 100 millilitres of blood, methylamphetamine in the amount of 0.06 mg/L and diazepam and its metabolites (Valium).
- 40 On Saturday 15 September 2018, a forensic medical officer deemed you fit for interview in the presence of an independent third person. You made some admissions stating that:
- You smoked ice at Eden at about 10:00 am and it had no effect on you;
  - You consumed beer at around the same time to celebrate the birth of your son;
  - You allowed AB to drive the vehicle and got him to blow into the interlock device;
  - You stuck to the speed limit all the way;
  - You had overtaken multiple vehicles over double white lines;
  - You recalled seeing a number of motorcycles on your journey;
  - You were travelling at about 140 km/h when you lost control of the vehicle; and
  - You took two or three Valium tablets on the morning of the collision.
- 41 Doctor Sunjeev Gaya of the Victorian Institute of Forensic Medicine analysed the results of the drug and alcohol tests and provided an opinion as follows:

The methylamphetamine level that was found was in the range of levels found in large numbers of people driving under the influence of drugs. Furthermore, witness observations of Mr Reid's driving before the crash strongly correlates with experiential findings of driving while stimulated by methylamphetamine. His observed demeanour after the crash is also in keeping with clinical observations of individuals under the influence of a stimulant drug like methylamphetamine.

The concentration of diazepam, and its respective metabolites were at therapeutic levels.

Finally, alcohol, methylamphetamine, diazepam and its metabolites were present at levels where in combination would have further degraded the skills required to drive and Mr Reid's driving would have been impaired.

Based on my specialised knowledge and the above interpretation, I am of the opinion that Mr Reid's driving ability was impaired by the detected drugs at the time of the index collision. Mr Reid would have been incapable of having proper control of a motor vehicle.

### **Nature and gravity of the offending**

- 42 I turn now to the nature and gravity of your offending.
- 43 The offence of culpable driving causing death is by its nature a very serious offence as it involves the death of a human being. Your counsel conceded that the particular circumstances of your offending represents 'a particularly grave example' of culpable driving.
- 44 In assessing the seriousness of your conduct I take into account all the circumstances including: that prior to the collision you were driving at speeds of up to 200 km/h for approximately one hour; that you filmed or had AB film you speeding and driving in a dangerous manner; that you made the choice to drive in circumstances where you were required to be '00' alcohol and that you had alcohol in your system; that you had an interlock device fitted to your vehicle that you used your friend to override on a number of

occasions; that you were driving while drug affected; and that you have two prior convictions for driving offences included driving over the prescribed concentration of alcohol, one of those appearances resulting in the fitting of the interlock device on your car.

- 45 You made a deliberate choice to drive after consuming methylamphetamine, alcohol and prescription medication and chose to drive at dangerously excessive speeds for a prolonged period while under the influence of that combination of substances. Your attitude which is apparent on the videos of your driving while your friend is encouraging you to go faster, further demonstrates your complete lack of regard to who may be at risk as a result of your conduct. Your actions on this occasion were entirely irresponsible and self-indulgent.
- 46 Further, your conduct at the scene in the moments following the collision was callous and reprehensible. While Felix Kostiuk was in shock and attending to his fatally injured father having just witnessed the impact, you approached him in an aggressive manner and verbally abused him. In my view, in all the circumstances your offending represents a very serious example of culpable driving and your moral culpability is high.

### **Victim impact statements**

- 47 Twelve victim impact statements were tendered on the plea. Of those 12, eight were read out aloud. I have taken the contents of all the victim impact statements into account. The clear and consistent theme in all the victim impact statements is that Victor Kostiuk was a much loved and respected husband, father, father-in-law, friend and colleague. Mr Kostiuk was a Detective Senior Sergeant in the Victoria Police and had served for 38 years. He was recognised as an expert in family violence and had developed a new policing model which was adopted by all police in the state.
- 48 Mr Kostiuk's wife Pauline was also a senior member of Victoria Police and had served for some 35 years reaching the rank of Superintendent before recently retiring. She speaks of the enormous loss as a result of losing her life partner of over 40 years. It is clear from the statement that Ms Kostiuk shared a full and active life with her husband. They

enjoyed motorcycle riding together which Ms Kostiuk is now unable to do as a result of feeling anxious and scared. They would travel, spend time on their boat which Ms Kostiuk has been forced to sell at a loss. They purchased a country house together in which to retire which Ms Kostiuk will now have to sell. After expressing the very real and natural response of the loss of her husband, Ms Kostiuk concludes her statement with the lamentable comment directed to you: 'I wish you had made different decisions on that day'.

- 49 Felix Kostiuk's statement provides a background of the life of Mr Kostiuk and the enormous contribution he made to the community through his career as a police officer. On a personal level, Felix Kostiuk also speaks of the pain of losing his father in horrific circumstances as a result of your conduct. He also of course witnessed the accident as your car stuck his father having just avoided being hit himself. He speaks of the Post Traumatic Stress Disorder he has suffered, experiencing multiple flashbacks every hour. He has not worked since the accident, he is under the care of medical practitioners and he has difficulty sleeping. He outlines the distress he suffers as a result of seeing the pain you have caused to his mother and his wife who was a much loved daughter-in-law and was also close to Mr Kostiuk. He is, understandably, very angry as a result of your appalling conduct. Not only does he relive the accident itself, he also lives with the reoccurring memory of your aggression towards him as he was tending to his fatally injured father.
- 50 I wish to direct some comments to the family of Mr Kostiuk.
- 51 There is nothing this Court can say or do that will bring back Victor Kostiuk, or heal your significant and unmeasurable grief and pain. The sentence I must impose can in no way be a measure of the worth of the life of Mr Kostiuk. Rather, the sentence I must impose is a reflection of a large number of factors which judges are required by law to take into account, only one of which is the impact on victims.
- 52 I also wish to acknowledge that the family and friends of Mr Kostiuk have conducted themselves in a dignified and respectful manner throughout this difficult criminal process.

## **Personal circumstances**

- 53 I turn now to your background and personal circumstances.
- 54 You are currently age 23. You were 21 at the time of the offending.
- 55 You are the sole child of your parents union. Your parents separated when you were five. As a result of both parents re-partnering following their separation, you now have nine half and stepsiblings.
- 56 Following your parents separation, your mother relocated on a number of occasions causing disruption to your education and to your social connections. You were moving between parents as result of an acrimonious separation. At the age of 13 you lived with your father for two years returning to your mother before moving out of home at age 16.
- 57 You completed year 10 and commenced an electrical apprenticeship. You stayed in that apprenticeship for some 18 months after which you left and became a labourer in areas of concreting, landscaping and steel fabrication. You hold no formal trade or academic qualifications.
- 58 You are in relationship with your partner Shannon Torney and were in that relationship at the time of your offending. You have an 11 month old son who was born as outlined above, near to the time when you began your trip from New South Wales to Victoria.
- 59 I was told that since your arrest in relation to this matter you have had no contact with your mother and that your relationship with her was already under strain as a result of your methylamphetamine use. However your father has maintained contact with you throughout your time in custody and has supported you through the court process. You have little or no relationship with your half and stepsiblings.
- 60 A report was prepared by Ian McKinnon, consultant psychologist and tendered on the plea. Mr McKinnon provides a detailed history including reference to you being the victim of a sexual assault at age 13. You had met two men in a park who provided you with drugs which you used. Following the use of those drugs you agreed to go with them and were taken to a location where you reported that they sexually assaulted you for a

prolonged period of time. It was submitted that following that attack you began to use illicit drugs and alcohol including cannabis, ecstasy and ultimately, methylamphetamine. It was put that you have been using methylamphetamine over your late teens and early 20's.

- 61 You have made attempts at rehabilitation in relation to your methylamphetamine addiction including a three month inpatient treatment in 2016. Following that treatment you remained abstinent for approximately eight months. After your relapse you also sought medical assistance in late 2017 and September 2018 just prior to your offending. At the time of the collision, you were prescribed Valium in relation to assisting you with your addiction which is consistent with what was found in your system following the collision.
- 62 Mr McKinnon is of the view that you suffer from Post Traumatic Stress Disorder (PTSD). He attributed the main cause of that as the sexual assault you apparently suffered when you were 13. However he is also of the view that the PTSD was then exacerbated by your involvement in the death of Mr Kostiuk and further, that your PTSD also subsumes polysubstance abuse as a means of self-medicating. Thus in my view, it is very difficult to disentangle the sources of your disorder. In that context I note that it was not submitted that the existence of your PTSD at the time of the offending engages any of the principles of *Verdins* in so far as they relate to your moral culpability.
- 63 While Mr McKinnon is not a forensic medical practitioner, from a psychological perspective he is also of the view that although not highly affected by alcohol and methylamphetamine, he is of the opinion that even at low levels, the combined effect of those substances mixed with the Valium that you had taken would have been enough to adversely affect to a degree, your judgement and ability to drive a motor vehicle.
- 64 Unsurprisingly Mr McKinnon is of the opinion that you need ongoing psychological therapy in order to address the historical precipitants of your PTSD and your history of substance abuse.
- 65 Since being in custody on these matters you have completed a number of rehabilitative

and vocational courses. You have also been employed in the maintenance unit in the kitchen in the prison and you volunteer your time assisting new inmates to adjust to the unit that you are housed in. Tendered on the plea were number of certificates in relation to the courses you have undertaken together with a urine screen indicating that you are currently drug-free. Also tendered on the plea were some medical records confirming your in-house drug rehabilitation in late 2017.

### **Sentencing considerations**

- 66 Mr Patton who appeared on your behalf, highlighted a number of matters to be given weight in mitigation. First, I take into account your plea of guilty which was entered at the committal stage. No witnesses have been cross-examined and your plea of guilty has avoided the time and expense of a trial. Most importantly your plea of guilty has avoided the need for witnesses to give evidence and relive the events. As such I accept that your plea has been entered at the earliest opportunity and further, it demonstrates your acceptance of responsibility and has therefore facilitated the course of justice.
- 67 Mr Patton submitted that the primary sentencing consideration in your case is your age. As noted, you are now 23 and were 21 at the time of the offending. As such it was submitted that rehabilitation should, despite the seriousness of the offending, take a primary role in the sentencing discretion. While I accept the well-settled principles in relation to young offenders and that they do have application in your case, I must weigh those considerations with the seriousness of the offending in this instance.
- 68 In *Azzopardi v The Queen*<sup>2</sup>, having reviewed the established authorities in relation to young offenders, Redlich JA said at paragraph 44:

The general propositions which flow from these authorities is that where the degree of criminality of the offences requires the sentencing objectives of deterrence, denunciation, just punishment and protection of the community to become more prominent in the sentencing calculus, the weight to be attached to youth is correspondingly reduced. As the level of seriousness of the criminality increases

---

<sup>2</sup> (2011) 35 VR 43.

there will be a corresponding reduction in the mitigating effects of the offender's youth. But only in the circumstances of the gravest criminal offending and where there is no realistic prospect of rehabilitation may the mitigatory consideration of youth be viewed as all but extinguished.

- 69 I accept that your relative youth still enlivens principles in relation to young offenders and has application in this case. However in my view the other relevant sentencing considerations such as general deterrence, denunciation of your conduct, just punishment and protection of the community must also carry weight in the sentencing discretion in this instance and therefore the mitigating effect of your youth is necessarily reduced in this instance.
- 70 Mr Patton also submitted that principles five and six of *Verdins* are enlivened as a result of your PTSD however there is little evidence to support that submission. Mr McKinnon is of the view that if the Court were to impose a significant term of imprisonment, you appear likely to be able to cope well enough with imprisonment. That said, he notes that your current condition demands intensive and ongoing therapy which is rarely available in prison. Further, you have engaged in courses in prison and have been given a trusted position in your unit and seem to have accepted that you will be required to serve a significant sentence. Thus while I accept that your PTSD will continue to trouble you, I give little weight to the *Verdins* principles in this instance.
- 71 As to specific deterrence, your prior history while limited, is relevant as it contains matters of driving whilst under the influence of alcohol, the last appearance resulting in the interlock device on your vehicle. It is also clear that while you have made attempts at ceasing your drug use you are still very vulnerable to relapsing as you have in the past. As such, subject again to the application of the principles in relation to your youth, in my view specific deterrence still must carry some weight in the sentencing equation.
- 72 As to your prospects of rehabilitation it is self-evident that you need to address your drug addiction and ultimately deal with the issues in your past that have led you to the position that you are now. Whilst it is clear that you will be in custody for a period of time and it is



difficult to predict how you will respond in the future to the opportunities you are given, you have in the past shown a willingness to accept assistance. Further, as a young person you still have a long future in front of you and if you are able to address the issues that led you to the state you were in at the time of your offending, in my view your prospects of rehabilitation will be reasonable.

- 73 In this instance Charge 3 is a standard sentence offence for which the standard sentence is one of eight years. Pursuant to section 5A of the *Sentencing Act* 1991, the period specified as the standard sentence for the offence is the sentence for an offence that, taking into account only the objective factors affecting the relative seriousness of that offence, is in the middle of the range of seriousness. Both Mr Hutton who appeared on behalf the Director of Public Prosecutions and Mr Patton on your behalf submitted that the objective seriousness of your conduct in relation to this offence elevate it above the mid-range of seriousness.
- 74 As has been established by recent authority in this state, taking into account the standard sentence for an offence is a guide post for the Court to consider as part of the instinctive synthesis like any other factor and does not have primacy in the exercise of the discretion.<sup>3</sup>
- 75 I also acknowledge s 5B(2)(b) of the *Sentencing Act* 1991 which provides that in sentencing an offender for a standard sentence offence, a court must only have regard to sentences previously imposed for the offence as a standard sentence offence. Further, when fixing a non-parole period for a standard sentence offence, pursuant to s 11A(4)(c) of the *Sentencing Act* 1991 unless the court considers it is in the interest of justice not to do so, the court must fix a non-parole period of at least 60% of the relevant term.
- 76 Finally, as you also fall to be sentenced on Charges 1 and 2 which placed others at risk of death as a result of your dangerous driving on this occasion, I am mindful that some cumulation must be ordered to reflect the separate conduct and separate victims. However I accept that Charge 2 is part of the same conduct that concluded with the

---

<sup>3</sup> *The Queen v Brown* [2018] VSC 742 at [65]-[68].

offending that gave rise to Charge 3. Further, in consideration of the overall gravity of your conduct represented by the three charges on the indictment, I also take into account the principle of totality.

## **Sentence**

77 Mr Reid please stand.

78 Jesse Christian Reid, on Charges 1 and 2, conduct endangering life, you will be convicted and sentenced to 3 years imprisonment on each charge.

79 On Charge 3, culpable driving causing death you will be convicted and sentenced to 9 years imprisonment. This is the base sentence.

80 I direct that 9 months on Charge 1 and 3 months on Charge 2 be served cumulatively on each other and on the sentence imposed on Charge 3 making for a total effective sentence of 10 years imprisonment. I direct that you serve 7 years before becoming eligible for parole.

81 Pursuant to s 18 of the *Sentencing Act* 1991, I declare that 349 days be reckoned as the period of imprisonment already served under the sentence I have imposed. That does not include today.

82 Pursuant to s 89 of the *Sentencing Act* 1991 your licence will be disqualified for a period of 7 years from today.

83 Pursuant to s 6AAA of the *Sentencing Act* 1991, if not for your plea of guilty I would have sentenced you to a period of 12 years and 6 months imprisonment with a non-parole period of 8 years and 6 months.

- - -